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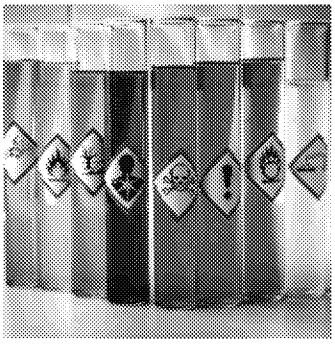
Subject: Pesticides & Toxic Substances Law News for June 24, 2020



Pesticides & Toxic Substances Law News for June 24, 2020

Bloomberg Environment — Environment & Energy

Highlights

LEADING THE NEWS

Supreme Court DACA Ruling Could Sway Environmental Permits' Fate

By Ellen M. Gilmer

The Supreme Court's surprise rebuke last week of the Trump administration's bid to rescind the Obama-era DACA immigration program may have unexpected impacts on environmental litigation over fossil fuel development, pipelines, and other projects.

Firefighters Face New Possible Risk From Toxic PFAS: Their Gear

By Andrew Wallender

Waterproofing chemicals in the protective gear worn by firefighters may be exposing them to "significant quantities" of potentially toxic fluorochemicals, according to a new study from the University of Notre Dame.

CHEMICALS

Bayer Wins Ruling Blocking California's Roundup Warning (1)

By Joel Rosenblatt

Bayer AG's Roundup won't require a label in California warning consumers that a chemical in the weed killer is known to cause cancer.

House Panel Wants Pentagon to Report 'Forever Chemical' Leaks

By Roxana Tiron

Defense Dept would have to notify congressional defense committees of any uncontrolled release of firefighting agents containing toxic 'forever chemicals,' under a draft proposal by a House Armed Services subcmte, as part of the annual defense authorization bill.

EPA, Housing Groups Defend Lead Paint Standard to 9th Cir.

By Martina Barash

The Environmental Protection Agency acted reasonably when it decided not to tighten the definition of "lead-based paint," the National Association of Home Builders and other housing groups told the Ninth Circuit, echoing a recent filing by the EPA.

AIR, WATER, AND WASTE

Trade, Red Tape Make U.S.-Produced Drugs a 'Massive Undertaking'

By Shira Stein and Jacquie Lee

The Trump administration's effort to manufacture more medical products in the U.S. will take several federal agencies, years of jumping through regulatory hoops, and hundreds of millions of dollars, lawyers, lobbyists, and policy analysts say.

IN THE AGENCIES

No new stories today.

INSIGHT

INSIGHTS: How to Successfully Evaluate Environmental Risks During a Pandemic

Investors usually evaluate potentially costly environmental issues associated with their deals, but restrictions during the pandemic are limiting inspections of target company facilities and hampering a proper examination of these risks. Stuart Hammer, of Debevoise & Plimpton, gives tips on how to effectively assess environmental risks during a pandemic and looks at lessons learned so far.

COURTS AND LAW

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AROUND THE WORLD

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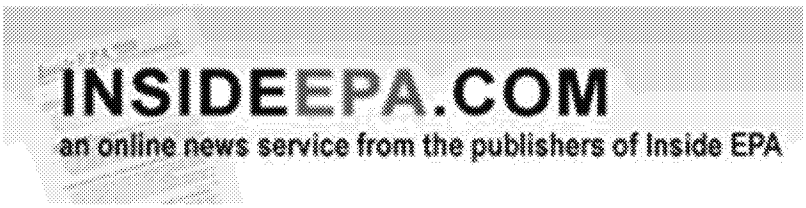

Redefining EPA

Overhauling an agency and its mission
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Latest News

Despite Reopening, EPA Union Urges Staffers Against Returning To Offices

As EPA headquarters and several regional offices begin the first phase of reopening, the agency's largest employee union is urging staff to continue working from home due to concerns about unsafe working conditions as the COVID-19 pandemic continues. FULL STORY

Daily Feed

Appeals court rejects challenge to EPA's dicamba cancellation order

The U.S. Court of Appeals for the 9th Circuit is letting stand EPA's decision to allow farmers to use up "existing stocks" of the herbicide after its registration was overturned. FULL STORY

Environment Next

No new stories today.

AN E&E NEWS PUBLICATION

POLITICS

Swing-state travel and policy align for agency chiefs

Timothy Cama and Hannah Northey, E&E News reportersPublished: Tuesday, June 23, 2020

Trump, Wheeler, Bernhardt, Brouillette. Credits: Claudine Hellmuth/E&E News(illustration); Francis Chung/E&E News(Wheeler, Bernhardt, Brouillette); Gage Skidmore/Flickr(Trump)

Interior Secretary David Bernhardt, Energy Secretary Dan Brouillette and EPA Administrator Andrew Wheeler have focused attention in recent weeks on states that are key to President Trump's reelection campaign. Claudine Hellmuth/E&E News(illustration); Francis Chung/E&E News(Wheeler, Bernhardt, Brouillette); Gage Skidmore/Flickr(Trump)

The heads of President Trump's environment and energy agencies in recent weeks have focused considerable attention on states that are key to the president's reelection campaign while walking a fine ethical line.

EPA Administrator Andrew Wheeler, Interior Secretary David Bernhardt and Energy Secretary Dan Brouillette have paid visits and made media appearances, including on conservative talk radio in crucial swing states in recent weeks. These

include treks to Pennsylvania, Wisconsin, Michigan and Florida in the time since their travel schedules have resumed after being cut off due to the coronavirus pandemic.

Each is promoting his agency's respective policy agenda in the swing states. But they're also sending a clear message that the states that will decide whether Trump gets another four years in office or is replaced by presumptive Democratic nominee Joe Biden have benefited greatly from the president's actions.

"We haven't had a president who's better qualified to talk about infrastructure and the need for investment and the problems that people encounter when they're trying to invest in communities than President Trump, probably since President Eisenhower created the highways," Wheeler said in a June 10 interview with Rich Zeoli, a Pennsylvania radio host.

That interview was part of a multistop swing through southeastern Pennsylvania, in which Wheeler announced a Brownfields grant to clean asbestos tiles in Pottstown, toured a Superfund site in Newlin Township and visited a farm in Lancaster.

But Wheeler also sought to draw a contrast between Trump and the Obama administration — where Biden was vice president — on how they dealt with nutrient runoff from farms.

"Previous administrations have tried to use a hammer with the Pennsylvania farmers. We're trying to work cooperatively with them," he said.

Trump won the Keystone State in the 2016 election, the first Republican to do so since 1988. But the race in Biden's home state is expected to be close this year, and the Scranton native has a good chance at winning.

Experts say the Trump officials aren't breaking new ground — the practice has occurred under both Republican and Democratic administrations — and they aren't likely violating federal prohibitions on using government money for political campaign purposes, including the Hatch Act of 1939.

"In my experience, it's not unusual for Cabinet-level and agency heads in many agencies to be involved in helping the president of their party get reelected," said Don Fox, who was the acting director of the Office of Government Ethics from 2011 to 2013.

"This is not something new. Every administration has engaged in activities along these lines," echoed Caleb Burns, an ethics and campaign attorney at Wiley Rein LLP who works for Republicans.

"And as long as the administration officials are not discussing campaign politics when they're out and about, they're not going to raise Hatch Act issues, nor issues under federal campaign finance law."

Burns argues it's a good thing these activities don't violate federal law.

"The rule cannot be that, simply because a state is a swing state in an election year, it's off-limits for members of the president's Cabinet to go and speak to people in that state on official business," he said. "That would be the absurd result if you had any different rule."

Even if it is legal, some question whether the strategy is effective.

Nathan Gonzales, editor and publisher of the nonpartisan *Inside Elections*, said he's skeptical that a Cabinet member appearing in a battleground state would help Trump's reelection bid.

"Visits by Cabinet secretaries give an administration an opportunity to be in more than one place at a time. It's a way to garner local press coverage and try to demonstrate that the president is getting things done," Gonzales said. "But ultimately, I'm skeptical that visits by Cabinet members are the deciding factor in a race."

From Great Lakes to national parks

EPA Administrator Andrew Wheeler announcing a grant in Wisconsin. Photo credit: University of Wisconsin- Milwaukee

EPA Administrator Andrew Wheeler announcing a grant in Wisconsin on Monday. University of Wisconsin- Milwaukee

While on his swing through Michigan, Wheeler cast Trump as a champion of the Great Lakes.

Earlier this month, farming and contamination cleanup were some main topics during his trip to the state.

"During the Trump administration, over the last three years, we have reduced the six criteria air pollutants 7%. And this is at the same time that we have had incredible economic growth in our country," Wheeler said on Steve Gruber's radio show, a program based out of Lansing.

Trump won in that state by less than a percentage point in 2016, but recent polling from EPIC-MRA found Biden with a 12-percentage-point lead, 53% to 41%.

Michigan touches four of the five Great Lakes, earning the nickname the Great Lakes State.

Yet the Great Lakes have been a sore spot for Trump. Initially, he proposed eliminating or cutting by 90% EPA's Great Lakes Restoration Initiative, only to announce at a campaign rally last year in Michigan that he would reverse his request and seek to fully fund it. Trump requested $300 million for the initiative for fiscal 2020, and $320 million for fiscal 2021.

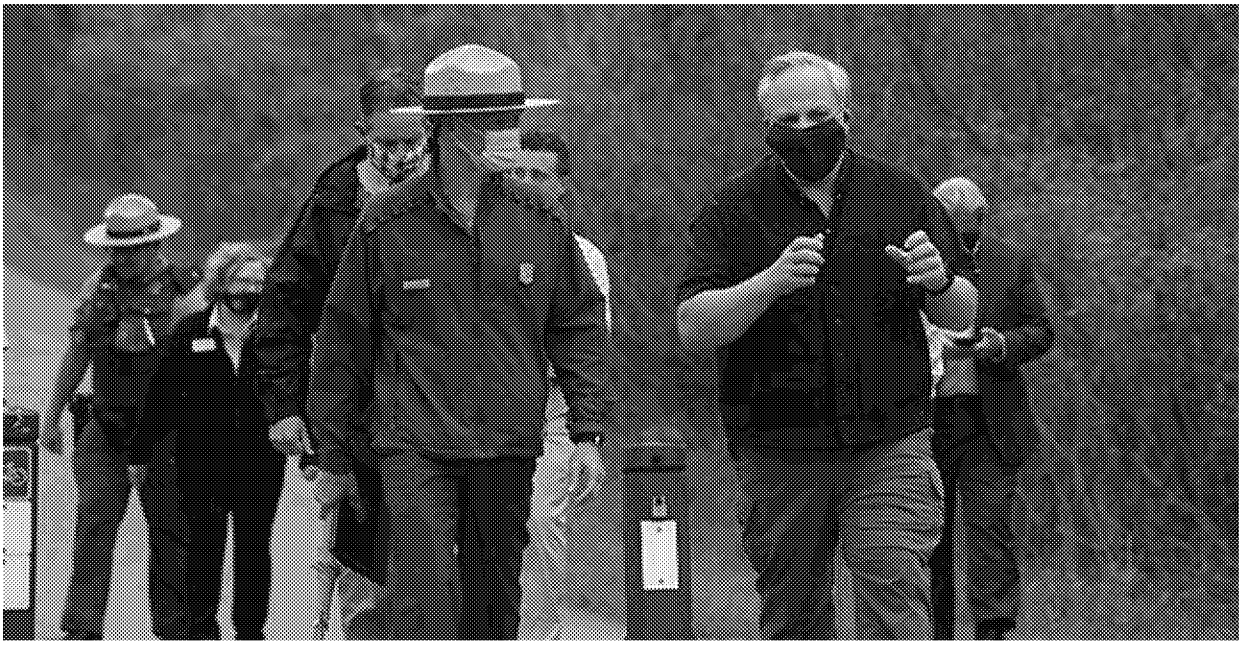
"The health of the Great Lakes is a top priority for President Trump and our administration, as evidenced by recent and ongoing efforts," Wheeler said in a slick campaign-style video later posted on Twitter.

Wheeler traveled to Wisconsin, another Great Lakes state and crucial swing state, earlier this month. He announced a grant to clean trash from Milwaukee waterways, toured a Superfund site and unveiled new air quality attainment designations, among other acts.

Wheeler has also tweeted slide decks recently to highlight environmental accomplishments under Trump in Pennsylvania and Michigan.

Bernhardt and Brouillette

David Bernhardt. Photo credit: @SecBernhardt/Twitter



Interior Secretary David Bernhardt visiting Cuyahoga Valley National Park in Ohio this month. @SecBernhardt/Twitter

Bernhardt has been busy in recent weeks visiting national parks to tout their increasing public access, as part of the nationwide "reopening" process from COVID-19.

But many of his visits have also been to swing states, including Ohio, Arizona and North Carolina.

When Cleveland-based Geraldo Rivera suggested during an interview with Bernhardt that spending time outside is a healthy way to avoid the coronavirus, Bernhardt agreed.

"I couldn't agree with you more — and the president couldn't agree with you more — get people out, give folks an opportunity to socially distance and engage in healthy, wonderful outdoors activities," he said.

Bernhardt traveled to Ohio in May to visit the Cuyahoga Valley National Park.

In many of his visits, Bernhardt has made Trump out to be a strong leader, directing the nation's reopening process.

"My direction from the president is to expeditiously increase access to our national parks, but do it consistent with the governor's approach. So we'll be flying right alongside each governor," he said on host Joe Thomas' Charlottesville, Va., show. "The reality is there's nothing better, I think, for America."

His trips have included Arizona's Grand Canyon National Park, North Carolina's Cape Hatteras National Seashore, Pennsylvania's Flight 93 National Memorial and Virginia's Shenandoah National Park.

Brouillette has been less active on the swing-state circuit, though he did a series of conservative radio interviews in Pennsylvania in March to promote the Trump administration's efforts to help the oil and gas industry. He also visited Florida this month to check how the energy industry there was preparing for hurricane season.

On Joyce Kaufman's West Palm Beach, Fla.-based show, Brouillette gave Trump credit for the fact that there have been no energy supply problems during the coronavirus pandemic.

"And it speaks again to the strength of the energy policy of this president," he said. "What President Trump has done is pursue an energy policy of what he refers to as 'all of the above.' And what that means, basically, is using all types of fuel sources for the purposes of generating energy."

In addition, Brouillette toured a national lab in Iowa last week and is traveling to both a Pennsylvania coal mine and an Ohio electric vehicle plant this week.

Brouillette has also touted Trump's executive order meant to protect the nation's bulk power system in recent newspaper op-eds in Pennsylvania and Michigan.

'Important agency announcements'

Representatives for federal agencies defended their leadership's travel around the country, telling E&E News it showed they were completing their missions during the pandemic.

"As the country moves toward reopening, EPA Administrator Wheeler is resuming travel to fulfill the agency's mission to protect human health and the environment in all 10 of EPA's regions," EPA spokesman James Hewitt said.

Hewitt said Wheeler's most recent trip "coincides with important agency announcements that positively impact the people of Wisconsin."

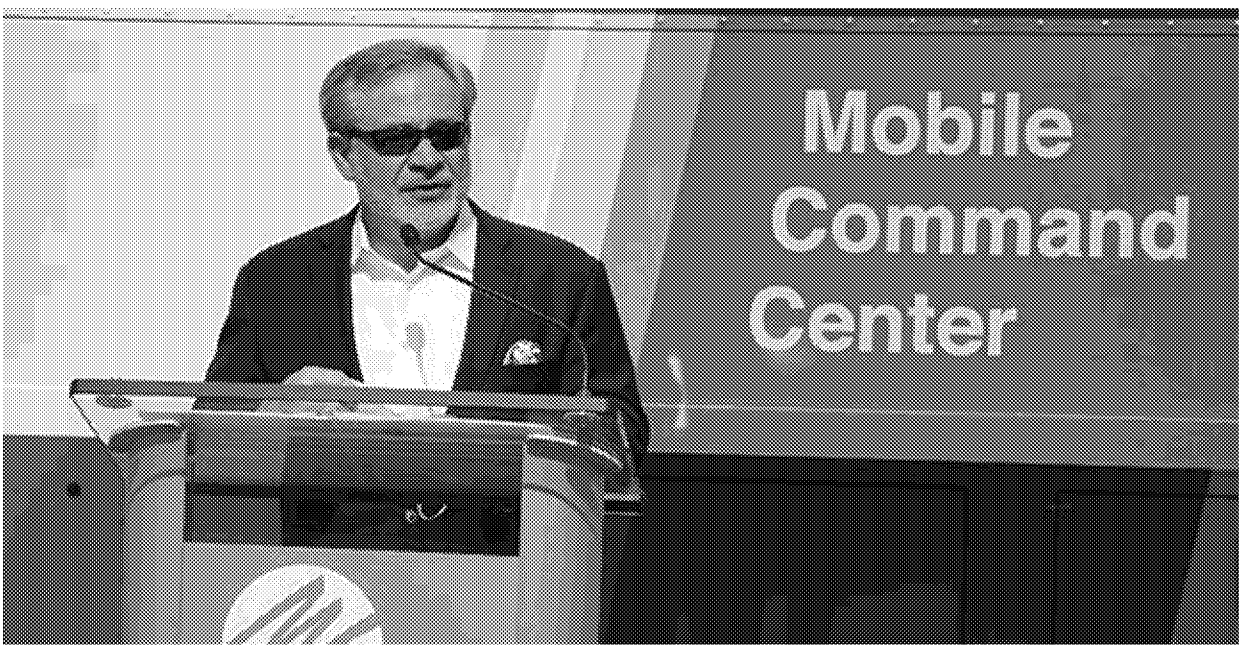
Interior spokesman Nick Goodwin said Bernhardt "has been traveling throughout the country to ensure the Department of the Interior is dutifully fulfilling its mission during the pandemic for the betterment of the American people."

"Ensuring our public lands remain safely accessible and operational and working to support the reopening of the American economy have been paramount as the Secretary conducts site inspections, leads tribal consultations, and oversees other critical activities that take place on our public lands and waters," Goodwin said.

DOE press officials didn't respond to questions from E&E News for this story.

Campaign strategy

Dan Brouillette. Photo credit: @SecBrouillette/Twitter



Energy Secretary Dan Brouillette dring a trip to Florida this month. @SecBrouillette/Twitter

When asked whether the appearance of agency heads in swing states is legal, Nick Schwellenbach, a senior investigator at the Project on Government Oversight, said the answer is not black-and-white.

It's not unusual for administrations to deploy top federal officials in an election year to battleground states to tout accomplishments, he said, and those officials can also even appear at campaign events.

To stay in compliance with the Hatch Act, officials at explicitly campaign events have to avoid appearing to use their official authority — namely, their title — and a percentage of the travel costs need to be borne by a political party or a campaign rather than taxpayers, he added.

But Schwellenbach said there are "muddier situations" if a top official appears with a member of Congress running for reelection that isn't officially a campaign event — like a ribbon-cutting ceremony at a federally funded project.

"As long as the event is legitimate, usually [the Office of Special Counsel] will say that's OK," he said, referring to the main agency that investigates potential Hatch Act violations. "But a pattern of disproportionately attending such events in battleground states or districts understandably looks like a deployment of taxpayer-funded resources for political ends."

Trips with political subtext are not new for the Trump administration. Travel by Wheeler and other agency heads travel in the months leading up to the 2018 elections led to appearances with vulnerable Republican candidates (*Greenwire*, Aug. 31, 2018).

Such travel was common among prior administrations, too — and also attracted scrutiny. A 2011 OSC report found that during the George W. Bush administration, taxpayer funds paid for political appointees' travel to events meant to help Republican candidates before the 2006 elections.

OSC also found that the political leadership of the General Services Administration sought to bolster the GOP in the run-up to the 2008 elections.

"One can imagine no greater violation of the Hatch Act than to invoke the machinery of an agency, with all its contracts and buildings, in the service of a partisan campaign to retake Congress and the governor's mansion," the OSC wrote in a May 18, 2007, memo.

Officials in President Obama's administration also raised some eyebrows with their election year travels. Interior Secretary Ken Salazar, Energy Secretary Steven Chu and EPA Administrator Lisa Jackson all did local public events with vulnerable Democratic lawmakers shortly before the 2010 midterm elections, according to the Center for Public Integrity.

House Republicans were also highly critical of Obama's 2014 decision to resurrect the White House Office of Political Strategy and Outreach, which investigators said Bush used to direct federal resources to help with political campaign activities (*E&E Daily*, July 14, 2014).

Liz Purchia, a former head of EPA public affairs during the Obama administration, said it's normal to see Cabinet officials travel to certain states and tout an administration's successes that people might remember when the election comes in November. But she questioned the Trump team's following that playbook.

"With the Trump administration, EPA has such a horrific record, and I would be hiding Andrew Wheeler, not putting him out there, because it's more opportunity to ask him about all of the rollbacks," Purchia said. "I don't understand why putting Andrew Wheeler in front of swing-state voters is a good idea. They should rethink their strategy."

She added, "You might get a quote in a local newspaper praising the administration, but it is going to be surrounded by local and environmental groups just bashing the administration."

Reporter Kevin Bogardus contributed.

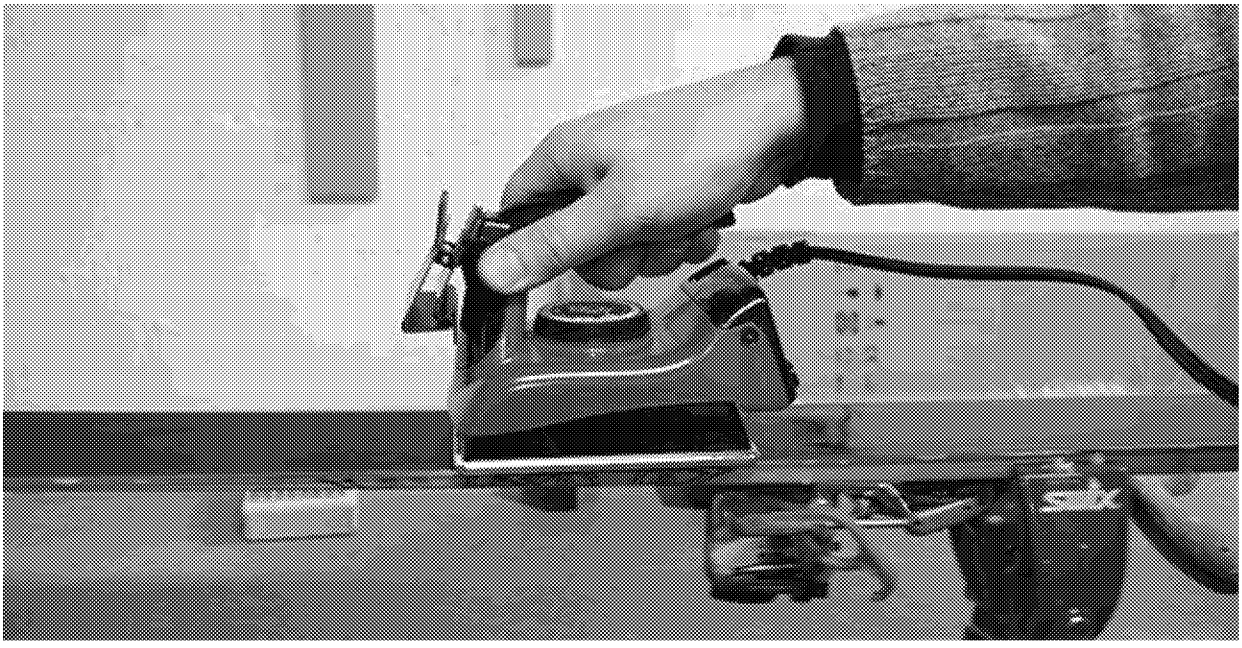
CHEMICALS

EPA rejects loophole in PFAS rule

Ariana Figueroa, E&E News reporter

Published: Tuesday, June 23, 2020

A person putting wax on a ski. Photo credit: Bari Bookout/Flickr



PFAS has been used in certain consumer products such as ski wax. Bart Bookout/Flickr

EPA rejected pressure from the White House to weaken an Obama-era rule that would restrict the use of toxic chemicals in consumer products.

At the center of the controversy are claims that Nancy Beck, President Trump's nominee to lead the Consumer Product Safety Commission, which is tasked with regulating more than 15,000 consumer products, tried to weaken the rule.

The agency announced yesterday that it's barring companies from manufacturing, processing or importing "significant new uses" of products containing long-chain per- and polyfluoroalkyl substances, or PFAS, without explicit EPA approval. The new rule applies to ski wax, carpets, furniture and a range of other consumer products.

Hundreds of documents obtained by Senate Environment and Public Works Committee ranking member Tom Carper (D-Del.) revealed pressure from Beck, a current White House aide and former EPA principal deputy assistant administrator for the Office of Chemical Safety and Pollution Prevention, to water down the rule (*E&E Daily*, April 20).

Her nomination has stirred controversy among Republicans, Democrats and advocates, who question her EPA record and implementation of the Toxic Substances Control Act as well as her industry ties (*Greenwire*, June 16).

Carper said Beck pressured EPA to include a loophole — a "safe harbor" provision giving companies a window of opportunity to import products made with PFAS without notifying the agency and be able to continue importing until EPA issued a final rule. Controversy over the issue emerged during Beck's confirmation hearing last week before the Senate Commerce, Science and Transportation Committee (*E&E Daily*, June 17).

According to the documents Carper's office obtained, EPA opposed the loophole proposal from the Office of Management and Budget.

"A safe harbor approach undermines the regulatory process for what uses are allowed by permitting a manufacturer to claim a use was ongoing at the time the SNUR [significant new use rule] was issued," according to the final rule. "For this final rule, EPA does not believe there should be a safe-harbor provision for uses not identified as ongoing uses in the SNUR, particularly since notice of the requirements of this action were provided five years ago."

"A safe-harbor provision provides incentives for importers to not submit comments to EPA during the public comment information on ongoing uses not recognized in a proposed rule," EPA wrote to OMB last year.

Carper yesterday hailed EPA's final rule as a victory.

"Earlier this year, I urged Administrator Wheeler to resist Dr. Beck's involvement in this rulemaking and instead support the legal and scientific views of EPA experts, who worked to promulgate these important protections for years," he said.

PFAS are a class of about 7,000 chemicals used in consumer products from nonstick cookware to waterproof clothing as well as firefighting foam on military bases and airports. Studies now link the chemicals to multiple health issues such as thyroid and liver damage and some cancers.

"These days, those kinds of appeals to reason are usually the triumph of man's hope over experience," Carper said. "But in this case, transparency, sound science and the law prevailed."

EPA Administrator Andrew Wheeler said in a statement that the new rule will protect public health.

"The regulation can stop products containing PFAS from entering or reentering the marketplace without our explicit permission," Wheeler said.

Another demand that Beck pushed for was to set up a de minimis reporting threshold level that would determine a "reasonable potential for exposure" to some type of PFAS in any imported product.

EPA rejected it and said the agency will "continue to engage with interested stakeholders on this issue and continue to consider whether guidance for applying this standard may be appropriate in the future, whether as a general matter or, for instance, as applied to specific categories of substances or potential exposures."

Betsy Southerland, a former career official in EPA's Office of Water, said the agency's decision will be more protective of public health.

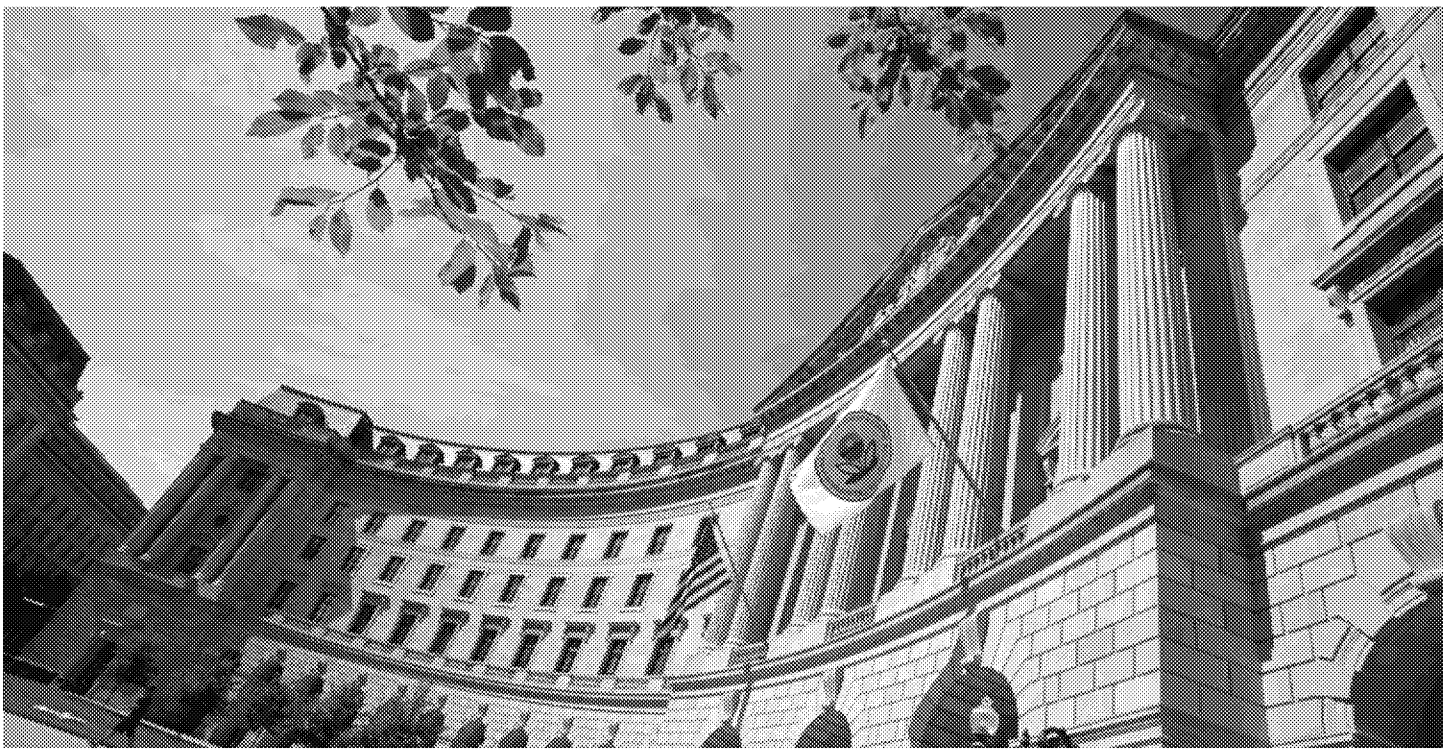
"People were very concerned that [EPA] was going to set some kind of de minimis reporting threshold that would eliminate a lot of users from having to notify their significant new uses. Furthermore, they were concerned the 'safe harbor' for imports would also mean you could keep having this contamination brought into the country in imported articles," she said.

EPA

Plan to torpedo nonbinding guidance docs flies under radar

Kelsey Brugger, E&E News reporterPublished: Tuesday, June 23, 2020

EPA headquarters. Photo credit: Francis Chung/E&E News



EPA headquarters. Francis Chung/E&E News

EPA has rolled out a proposal that would require public comments on new regulatory guidance documents and allow petitions for killing old ones.

At issue are nonbinding guidance documents, memos and notices that clarify rules and regulations.

Republicans have long derided such guidance documents as "regulatory dark matter." In 2018, the GOP-controlled House Oversight and Reform Committee launched an investigation into the "ubiquitous and nebulous character of agency guidance" as a way to cut regulatory costs for industry.

The current proposal, "EPA Guidance: Administrative Procedures for Issuance and Public Petitions," emerged from a 2019 executive order from President Trump and has been described by EPA Administrator Andrew Wheeler as a way to boost transparency and ensure that the agency "is not creating new regulatory obligations through guidance."

While EPA's critics have acknowledged some benefits of the proposal, including a new online database to house documents, they argue the result would create "unworkable procedural burdens" to agency operations.

"Having worked inside the system, this is really important," said George Wyeth, a former EPA attorney and member of the nonprofit Environmental Protection Network. "Guidance plays a really necessary function, and if EPA did less of it, people would be clamoring for more clarification."

The public comment period ended yesterday. Only 55 comments were filed on the federal regulatory website, and as of deadline, just 16 had been posted. That is a fraction of the hundreds of thousands of comments filed on some other EPA proposals.

So far, all except the National Association of Small Trucking Cos. opposed the plan.

"This proposal epitomizes the kind of regulatory due process and transparency that is consistent with the rule of law," wrote David Owen, president of the trade group. He added that it "should be beneficial to anyone looking for or using a guidance document."

But critics charge that EPA erroneously relies on the Federal Housekeeping Statute, which does not apply to EPA and is intended for internal administrative issues, not substantive rules.

"EPA is trying to use a 19th-century statute giving department heads the right to manage personnel and internal record keeping to constrain the ability of its regional offices to implement guidance specific to the unique geographic regions of the United States," wrote Kevin Bell, staff counsel for Public Employees for Environmental Responsibility.

EPA has a record of invoking the housekeeping statute, including for its controversial "Strengthening Transparency in Regulatory Science" proposal, which would restrict public health and environmental studies from policymaking. That plan could also tie the hands of a future administration.

Since 1994, EPA has cited the housekeeping law in 82 actions, but almost all dealt with acquisitions and contracts, according to Bell.

Critics also say it would strip power from regional EPA offices to deviate from anything that the EPA administrator does not pre-authorize. Yet the Trump administration has lauded the idea of states' rights and that "different parts of the country deserve the opportunity to undertake differing approaches to state- and region-specific issues," Bell said.

Should Trump lose his November reelection bid, eliminating this specific rulemaking might not be among the new administration's top 10 priorities, Wyeth noted. But it could "gum up" the way everything works, he said.

"If you really care about how the government works, this is an important one," he said.

PEOPLE

Ex-corporate lawyer heads to former EPA officials' firm

Kevin Bogardus, E&E News reporter

Published: Tuesday, June 23, 2020

A former corporate environmental lawyer has joined Earth & Water Law as a partner.

Joe Dawley has more than 30 years of experience in environmental law, including as a top attorney for EQT Corp. At the natural gas company, he helped lead its push on the Mountain Valley pipeline project.

Joseph Dawley Photo credit: Joseph Dawley/LinkedIn

Joe Dawley Joseph Dawley/LinkedIn

Dawley joins several former EPA officials at the firm, including its founder and chairman, Brent Fewell, who served at the agency during the George W. Bush administration.

In a statement, Fewell said Dawley's "extensive knowledge of the oil and gas production and midstream industries will add to the depth of services that Earth and Water offers to our clients, which will be particularly helpful during this time of increased regulatory and economic uncertainty."

Dawley said he was excited to join the firm and apply his experience for client projects "that are a win-win for the economy and the environment."

He has a Bachelor of Science degree in chemical engineering from Syracuse University and a law degree from Lewis & Clark Law School.

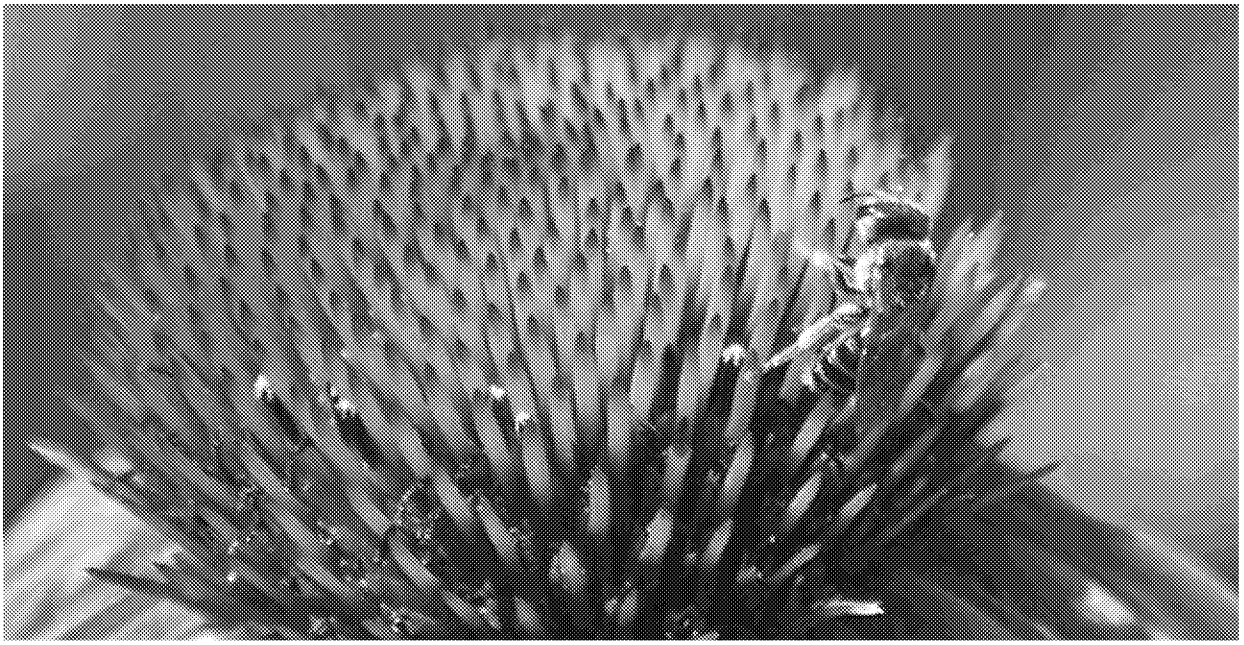
Dawley has held several positions in the private sector and the government during his career, including a stint as general counsel for the West Virginia Department of Environmental Protection.

POLLINATORS

U.S. honeybees doing better after bad year, survey shows

Published: Tuesday, June 23, 2020

Honeybee. Photo credit: Jamie Weliver/FWS/Flickr



Honeybees are threatened by mites, diseases, pesticides and loss of food. Jamie Weliver/FWS/Flickr

American honeybee colonies have bounced back after a bad year, the annual beekeeping survey finds.

Beekeepers only lost 22.2% of their colonies this past winter, from Oct. 1 to March 31, which is lower than the average of 28.6%, according to the Bee Informed Partnership's annual survey of thousands of beekeepers. It was the second smallest winter loss in the 14 years of surveying done by several different U.S. universities.

Last winter's loss was considerably less than the previous winter of 2018-2019 when a record 37.7% of colonies died off, the scientists found. After that bad winter, the losses continued through the summer of 2019, when beekeepers reported a 32% loss rate. That's much higher than the average of 21.6% for summer losses. Those summer losses were driven more by hives of commercial beekeepers than backyard hobbyists, said bee partnership scientific coordinator Nathalie Steinhauer.

While the summer losses are bad, winter deaths are "really the test of colony health," so the results overall are good news, Steinhauer said. "It turned out to be a very good year."

Populations tend to be cyclical with good years following bad ones, she said. The scientists surveyed 3,377 commercial beekeepers and backyard enthusiasts in the United States.

"One would hope that a lower winter loss means a better 2020 assuming that the weather cooperates and beekeepers don't end up skimping on colony management," said University of Montana bee expert Jerry Bromenshenk, who wasn't part of the study.

Beekeepers in the U.S. also may be taking more of their colonies indoors in the winter, helping them survive, said University of Georgia entomologist Keith Delaplane. New Department of Agriculture research suggests putting bees in "cold storage" helps them survive the winter.

For decades scientists have been watching the population of pollinators — crucial to the world's food supply — shrink. Honeybees, the most easily tracked, are threatened by mites, diseases, pesticides and loss of food.

Loss rates now being seen "are part of the new normal," Steinhauer said. — *Seth Borenstein, Associated Press*

PESTICIDES

Calif. can't require cancer label on Roundup — court

Marc Heller, E&E News reporter

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Roundup bottles. Photo credit: Mike Mozart/Flickr

Glyphosate is the active ingredient in the weedkiller Roundup. Mike Mozart/Flickr

California can't legally force a cancer warning label on the weedkiller glyphosate because evidence doesn't show it causes the disease, a federal court ruled yesterday.

In yesterday's ruling in the U.S. District Court for the Eastern District of California, Judge William Shubb said that "the heavy weight of evidence in the record is that glyphosate is not known to cause cancer."

Shubb's ruling made permanent an injunction he had issued earlier in the case, which pits the National Association of Wheat Growers, CropLife America and other agribusiness groups against state regulators.

State regulators required the label, stating that glyphosate is known by the state of California to cause cancer, under the state's Proposition 65. That measure requires the state to maintain a publicly available list of human carcinogens, and companies that market them must disclose the danger. Glyphosate first appeared on the list in July 2017.

The label was to have taken effect a year later, but the court blocked it with a temporary injunction that February.

The ruling is a victory for farm groups and agribusinesses that say activists have overblown the risks of glyphosate, one of the most widely used herbicides on farms and home gardens. Americans have applied close to 2 million tons of glyphosate since Monsanto Co. introduced it under the brand name Roundup in 1974, by some estimates, and corn planted in the United States is now genetically engineered to tolerate it.

Bayer acquired Monsanto, and the Roundup controversy with it, in 2018.

Glyphosate has been so heavily used that some weeds have developed resistance, forcing farmers to seek an ever-expanding variety of chemical treatments.

Glyphosate has faced dozens of lawsuits following a finding in 2015 by the International Agency for Research on Cancer (IARC) that it's "probably carcinogenic" based on "sufficient evidence" that it caused cancer in laboratory animals and "limited evidence" that it would cause cancer in humans.

But many other agencies and organizations, including EPA and the World Health Organization's International Programme on Chemical Safety, have said they find insufficient or no evidence glyphosate causes cancer, which the judge cited in his ruling.

"Notwithstanding the IARC's determination that glyphosate is a 'probable carcinogen,' the statement that glyphosate is 'known to the state of California to cause cancer' is misleading," Shubb said. "Every regulator of which the court is aware, with the sole exception of the IARC, has found that glyphosate does not cause cancer or that there is insufficient evidence to show that it does."

Shubb, a George W. Bush appointee, said he wasn't persuaded by additional studies suggesting a cancer link, nor by criticism of EPA.

In addition, he said, the herbicide's losses in cancer-related lawsuits in California don't indicate that a warning label would be "factual and uncontroversial."

The National Association of Wheat Growers praised the ruling, defending glyphosate's long history of use and its value in farmland conservation. Farmers often use it as an alternative to plowing weeds into the ground, which reduces erosion and can promote healthier soil, the group said. Glyphosate is backed by more than 40 years of safety data, said NAWG.

"In recent years, we have seen a drastic increase in consumer interest around climate change and the public calling on agriculture to use more environmentally friendly practices," said NAWG President Dave Milligan, a wheat farmer in Cass City, Mich.

"Glyphosate is a tool which can help meet these goals. It has become very effective in protecting the soil from erosion and also improves soil fertility and water quality from increased use of conservation tillage and no-till farming practices," Milligan said.

Yesterday's ruling applies to the labeling dispute, while broader litigation carries on through appeals. Courts in California have awarded tens of millions of dollars in damages to cancer victims.

CHEMICALS

Study: PFAS in firefighter gear rubs off

Bev Banks, E&E News reporter

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California firefighter. Photo credit: Cecilio Ricardo/Forest Service/Flickr

A new study has found the presence of PFAS in firefighters' turnout gear. Cecilio Ricardo/Forest Service/Flickr

Firefighters may be at danger from dangerous chemicals coming off their protective gear, according to a new study.

Research published in the journal *Environmental Science & Technology Letters* found that textiles in firefighter turnout gear contained high levels of per- and polyfluoroalkyl substances (PFAS).

The study's lead author, Graham Peaslee, an experimental nuclear physics professor at the University of Notre Dame, said the research proves PFAS chemicals come off the gear.

"The main conclusions we got is that we saw how much was coming off and that we can prove for the first time that it actually sheds," Peaslee said.

More than 30 sets of new and used firefighter turnout gear were tested using a particle accelerator to identify traces of PFAS in the textiles.

Firefighter turnout gear has three layers — a thermal liner, a moisture barrier and an outer shell. Peaslee said high levels of PFAS were detected in the gear's outer shell and moisture barrier.

In the new gear, PFAS transferred from one layer to the other even though the set had never been exposed outside of the packaging.

"What we did see was that the inner liner was fluorine-free when it was made and then as soon as you sewed it in the jacket, it started picking up fluorine," Peaslee said.

Researchers also tested dust samples from a textile storage area where turnout gear is stored and distributed.

Results showed PFAS in the sample swiped from the floor, which further demonstrates how readily these chemicals transfer to other surfaces.

"What we didn't know was the rate in which it comes off, and it comes off quite readily," Peaslee said.

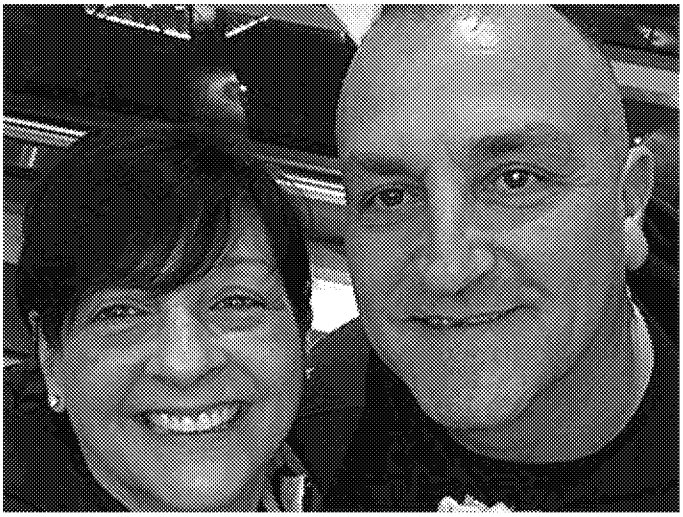
After handling some of the gear, Peaslee said, PFAS could be detected on gloves. His students measured their gloves before handling the gear and no fluorine was detected, but fluorine was present after touching the protective equipment, he said.

'Risk factor'

Exposure to PFAS chemicals has been linked to an increased risk of cancer, according to the Agency for Toxic Substances and Disease Registry.

The International Association of Fire Fighters said cancer is the leading cause of death for members of the fire service.

Diane and Paul Cotter. Photo credit: Diane Cotter



Paul Cotter, who spent 28 years as a firefighter, was diagnosed with prostate cancer. His wife, Diane, had some of his gear tested for PFAS. Diane Cotter

Some firefighters have reported incidences of cancer and questioned whether it is connected to long-term exposure to aqueous film-forming foam, or AFFF, containing PFAS. The foam is used to put out fires quickly in both civilian and military fire services.

Diane Cotter, wife of a former civilian firefighter in Massachusetts, suspected that the turnout gear contained high levels of PFAS after her husband Paul was diagnosed with prostate cancer (*Greenwire*, April 3).

Peaslee doesn't want to discourage firefighters from wearing the turnout gear but said companies should consider safer standards to make the textiles in the protective equipment.

"We haven't proven that it's causing cancers," Peaslee said. "But you can prove that it's a risk factor and needs to be considered."

'Where does it go?'

More studies are needed to determine how PFAS are transferred from the textiles of the gear to the skin, Peaslee said.

He is planning to release a study focusing on the transference of PFAS to answer the question "Where does it go?" later this year.

"We are doing a study with some collaborators on putting [PFAS] on the skin of mice and see if it goes through the skin," Peaslee said.

Preliminary results indicate that PFAS do transfer to the skin, but that conclusion won't be certain until the research is published this fall, he said.

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